

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**TYLER DAVIS**  
Claimant

**APPEAL NO: 13A-UI-06876-B**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINNEBAGO INDUSTRIES**  
Employer

**OC: 05/12/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Tyler Davis (claimant) appealed an unemployment insurance decision dated June 3, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Winnebago Industries (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on August 5, 2013. The claimant did not participate. The employer participated through Gary McCarthy, Personnel Supervisor. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production assembler/fabricator from December 14, 2009 through May 5, 2013 when he was considered to have voluntarily quit. The employer's policies provide that an employee is considered a voluntary quit if they are incarcerated for more than one work shift and/or if they are a no-show/no-call for three consecutive shifts. The claimant's last work day was April 1, 2013 and he was a no-call/no-show for the next three work days. His sister called the employer on April 5, 2013 to report that he was confined in jail. The claimant's appeal letter indicated he was incarcerated for 33 days.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to call or report to work after April 1, 2013.

The law presumes it is a quit without good cause attributable to the employer when an employee is absent for three days without notification in violation of company rule and the claimant is deemed to have left if such claimant becomes incarcerated. 871 IAC 24.25(4) and (16). The claimant has failed to meet his burden that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2.

In the alternative, the separation could also be characterized as a discharge, in which case, the employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant's five days of no-call/no-show show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has also been established. Benefits are denied.

**DECISION:**

The unemployment insurance decision dated June 3, 2013, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs